

(O-92-113)

ORDINANCE NUMBER O-17750 (NEW SERIES)

ADOPTED ON MARCH 16, 1992

AN ORDINANCE TO REMOVE A PORTION OF MT.
SOLEDAD NATURAL PARK FROM DEDICATED PARK
STATUS AND TRANSFERRING TITLE OF THE
SAME PARCEL TO MT. SOLEDAD MEMORIAL
ASSOCIATION.

WHEREAS, the Mt. Soledad Memorial Cross, located in Mt. Soledad Natural Park, is a long-established war memorial and has also been designated as an historic landmark by the San Diego Historical Site Board; and

WHEREAS, The City of San Diego wishes to preserve all of its historic landmarks in accordance with applicable legal requirements; and

WHEREAS, in his December 3, 1991 Judgment, in the case of Paulson et al v. City of San Diego, the United States District Judge ruled that the Memorial Cross's location on public property violates the California Constitution; however, in the same opinion, the judge suggested that the constitutionality of the Memorial would be beyond question if it were located on private property; and

WHEREAS, the City wishes to take cognizance of the judge's remarks regarding the ownership of the land on which the Memorial is located; and

WHEREAS, the Mt. Soledad Memorial Association is a nonprofit corporation which built, owns and presently maintains the Memorial and is ready, willing and able to purchase the parcel of land described herein as Exhibit A; agrees to preserve the land as open space for the benefit of the public; and

WHEREAS, Mt. Soledad Natural Park was originally Pueblo Lands, and was dedicated as a public park in 1916; and

WHEREAS, San Diego City Charter section 1 provides that the City may sell, lease, convey, exchange, manage and dispose of land as the interests of the City may require; section 2 specifies that the City's powers are subject only to the restrictions and limitations of the Charter; section 55 authorizes the City to change the use or purpose of dedicated park property with ratification by two-thirds (2/3) of the

qualified electors of the City; and section 219 provides for sale of Pueblo Lands by ordinance with later ratification by the voters; and

WHEREAS, the approximately fifteen by fifteen foot (15' x 15') parcel of land on which the Memorial is located has been appraised as required by San Diego Municipal Code section 22.0902 (providing for the sale of City property when authorized by resolution); NOW, THEREFORE, NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1.

(a) That, in order to preserve an historic war memorial and designated landmark, a portion of the property known as Mt. Soledad Natural Park, as more definitively described in Exhibit A, attached and incorporated herein by reference, is hereby removed from dedicated park status, and the City Manager is hereby authorized to sell and convey said parcel to the Mt. Soledad Memorial Association for the sum of \$14,500, which has been appraised to be and which the Council hereby accepts as the fair market value of the property, with ratification by two-thirds (2/3) of the qualified electors of the City, voting at an election for such purpose, a condition subsequent to the present transfer.

(b) That The City of San Diego may, at its discretion, pay a real estate broker's commission under the provisions of San Diego Municipal Code section 22.0905 for the sale of such real property; however, no broker's fee is involved in this transfer.

(c) That the property will be sold by negotiation to the Mt. Soledad Memorial Association since the Association built, presently owns and maintains the Memorial, and has agreed to purchase the referenced parcel.

(d) That in the event a court subsequently determines that the historic war memorial and designated landmark may legally stand on public property, the City may at any time repurchase said property for the original purchase price paid by the Mt. Soledad Memorial Association to The City of San Diego.

Section 2. This ordinance shall take effect and be in force thirty days after its adoption.

APPROVED: JOHN W. WITT, City Attorney

By

Mary Kay Jackson

Deputy City Attorney

MKJ:mb

02/24/92

Or.Dept:Pk.&Rec.

O-92-113

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